

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

INSTITUTIONAL COST CONTRIBUTION  
REQUIREMENT FOR COMPETITIVE PRODUCTS

Docket No. RM2012-3

ANSWER OF THE UNITED STATES POSTAL SERVICE  
TO PARCEL SHIPPERS ASSOCIATION MOTION  
(March 2, 2012)

In Order No. 1108, the Postal Regulatory Commission established Docket No. RM2012-3 to review the institutional cost contribution requirement for competitive products, in accordance with 39 U.S.C. § 3633(b).<sup>1</sup> On February 24, 2012, the Parcel Shippers Association (PSA) moved to extend the period for initial and reply comments until early 2013.<sup>2</sup> The Postal Service essentially supports PSA's motion, as detailed below.

*I. Statutory Basis for Extension*

As PSA recognizes, a threshold issue is whether the statute permits the requested extension. In this regard, PSA argues that the Commission has already complied with section 3633(b) simply by initiating the present review, and that the statute's silence on the duration of the review leaves the duration to the Commission's discretion.<sup>3</sup> The Postal Service agrees with the latter point, but as to the former, the Postal Service notes that section 3633(b) contemplates the Commission doing more

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<sup>1</sup> Order No. 1108, Notice of Proposed Rulemaking to Evaluate the Institutional Cost Contribution Requirement for Competitive Products, Docket No. RM2012-3 (Jan. 6, 2012).

<sup>2</sup> Motion of the Parcel Shippers Association to Extend the Period for Preparing Initial and Revised Comments, Docket No. RM2012-3 (Feb. 24, 2012) ("PSA Motion").

<sup>3</sup> PSA Motion, at 2.

than conducting a review – it explicitly contemplates the Commission making some form of determination.<sup>4</sup> Therefore, it would be more in keeping with the intent of the statute for the Commission to issue a provisional ruling determining to continue the present 5.5 percent contribution requirement, giving parties until early 2013 to comment on changing the 5.5 percent contribution requirement, and providing for an ultimate determination to be made sometime in 2013.

## *II. Reasons to Delay Ultimate Determination*

PSA has adequately explained why it would make sense to delay a definitive determination on the contribution requirement until 2013.<sup>5</sup> In short, FY 2012 could well see significant changes to the Postal Service's operational and legal environments. For example, implementation of the service changes under review in Docket No. N2012-1 could systemically alter the Postal Service's cost structure. Similarly, legislation, if enacted, could result in other fundamental changes, particularly with respect to the Retiree Health Benefits Fund prefunding requirement. Given that section 3633(b) envisions the Commission's ultimate determination in this docket staying in effect until at least 2017, it would be prudent to wait until the impact of this year's changes can be properly assessed before making a definitive determination. Otherwise, any determination made now could become outdated fairly quickly.

## *III. Support for Provisional Determination to Continue 5.5 Percent Requirement*

The Commission has sufficient information at its disposal to make a provisional determination to continue the 5.5 percent contribution requirement. Specifically, information developed in each of the last five Annual Compliance Review dockets

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<sup>4</sup> See 39 U.S.C. § 3633(b) ("In making its determination, the Commission shall...").

<sup>5</sup> PSA Comments, at 3-7.

shows that competitive product contribution equaled the following share of institutional costs over the last five years:

COMPETITIVE PRODUCT CONTRIBUTION SHARES	
Fiscal Year	Contribution as a Share of Institutional Costs
2007	5.66 %
2008	5.54 %
2009	6.78 %
2010	7.12 %
2011	7.84 %

\* FY2007 – FY2010 figures are taken from the Commission's Annual Compliance Determination in each of those years. The FY 2011 figure is from the Postal Service's FY 2011 Annual Compliance Report.

Importantly, in FY 2009, Congress deferred \$4 billion of the Postal Service's \$5.5 billion Retiree Health Benefits Fund prefunding requirement, and in FY 2011, Congress deferred the entire \$5.5 billion prefunding requirement. If Congress had not made these deferments, and instead these amounts had been considered institutional costs in FY 2009 and FY 2011, the competitive product contribution would have covered a lower share of total institutional costs in those years than presented above. The table below provides estimates of what those percentages would have been if not for the deferments:

ADJUSTED COMPETITIVE PRODUCT CONTRIBUTION SHARES	
Fiscal Year	Contribution as a Share of Institutional Costs
2007	5.66 %
2008	5.54 %
2009	5.96 %
2010	7.12 %
2011	6.61 %

Reviewing the figures above, it is notable that, over the last five years, with the exception of FY 2010, the contribution of competitive products annually has been only

slightly above 5.5 percent of total institutional costs. It is also noteworthy that, over the same time period, no parties have asserted to the Commission that the Postal Service is intentionally underpricing its competitive products to unfairly gain market share from its competitors. Indeed, over the last five years, no evidence has been proffered to the Commission even implying that the Postal Service is artificially keeping its competitive product prices as low as needed to just barely clear the 5.5 percent hurdle. While these observations are not, in themselves, sufficient to support a definitive determination to maintain the 5.5 percent requirement for the next five years, they clearly are sufficient to inform a provisional determination to maintain the 5.5 percent requirement for another year.

#### *IV. Response to Public Representative Comments*

Thus far, answers to PSA's request have been filed by the Direct Marketing Association, Inc., the Association for Postal Commerce, and the Public Representative.<sup>6</sup> The Postal Service would like to briefly point out the inapposite nature of the Public Representative's comments. First, the Public Representative states that, in reviewing the contribution requirement, the Commission should focus on trends in competitive products' share of total volume and revenue over the last five years.<sup>7</sup> The Public Representative observes that the volume share has remained relatively steady while the

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<sup>6</sup> Comments of the Direct Marketing Association, Inc. in Support of the Parcel Shippers Association Motion for Changes in Procedural Schedule, Docket No. RM2012-3 (Feb. 28, 2012); Comments of the Association for Postal Commerce in Support of the Motion of the Parcel Shippers Association for Changes in the Procedural Schedule, Docket No. RM2012-3 (Feb. 29, 2012); Public Representative Comments on Parcel Shippers Association Motion to Extend Initial and Reply Comment Period, Docket No. RM2012-3 (Feb. 29, 2012) ("Public Representative Comments").

<sup>7</sup> Public Representative Comments, at 2.

revenue and contribution shares have grown, implying that the regulatory contribution requirement should increase to match this growth.

Putting aside the fact that, as shown by the adjusted table above, the competitive contribution share has not been growing, the Public Representative misses the fundamental purpose of the contribution requirement. As the Commission explained in Docket No. RM2007-1, the contribution requirement “is a floor for all competitive products, but the hope (and expectation) is that competitive products will generate contributions in excess of the floor.”<sup>8</sup> Thus, that the Postal Service grew competitive product revenues, thereby generating competitive contribution in excess of the regulatory floor in certain years (as hoped for by the Commission), does not mean that the floor should be raised. In contrast to the Public Representative’s recommendation, the Commission’s focus in this docket should instead be on the effects of the current contribution requirement on the competitive marketplace.

Second, the Public Representative states that a six month extension of the present docket’s comment period would be adequate, in place of the yearlong extension recommended by PSA. A six month extension would serve no real purpose, as it would be impossible to assess the impact of the major changes expected in FY 2012 at the close of six months. For example, in six months time, the network rationalization initiative (if implemented) would be in its very initial stages, and legislative changes, if any are enacted by then, may not have even taken effect.

Third, the Public Representative urges the Commission to require the Postal Service to produce quarterly cost data, because, in the Public Representative’s view,

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<sup>8</sup> Order No. 26, Docket No. RM2007-1 (Aug. 15, 2007), at ¶ 3056.

such “data for the first three quarters of FY 2012 would enable the parties to develop meaningful comments and presentable data to the Commission” for the present rulemaking.<sup>9</sup> In making this recommendation, the Public Representative never explains why the five years’ worth of Commission-reviewed data that are already available are insufficient to enable parties to develop meaningful comments and presentable data. And if, as implied, the five years’ worth of data really are insufficient, the Public Representative never explains how three additional quarters of data would cure the insufficiency. Furthermore, the Public Representative admits that the quarterly data would be unaudited and unreliable, meaning that the Commission would likely have to convene and conclude a 39 C.F.R. § 3050.11 proceeding before any such data could be properly prepared and admitted as evidence on the record. For these reasons, the Commission should disregard the Public Representative’s recommendation.<sup>10</sup>

#### V. *Conclusion*

For the reasons outlined above, the Postal Service recommends that the Commission issue a provisional determination continuing the current 5.5 percent

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<sup>9</sup> Public Representative Comments, at 3.

<sup>10</sup> The Postal Service observes that, recently, the Office of the Public Representative has repeatedly pushed for unprecedented, additional regulatory reporting requirements in dockets that are focused on other matters. See, e.g., Public Representative Comments, Docket No. ACR2011 (Feb. 3, 2012), at 12-13 (asking the Commission to promulgate new monthly reporting requirements regarding the Postal Service’s financial condition). Besides not being germane to the dockets in which they appear, these sorts of requests are particularly unnecessary at a time when the Postal Service can ill afford greater regulatory burdens. See also Reply Comments of the United States Postal Service, Docket No. ACR2011 (Feb. 17, 2012), at note 7 (“So as not to perpetuate the tendency to treat the Annual Compliance Review as the stage for parties’ regulatory wish lists, the Postal Service will refrain from responding in depth to the Public Representative’s recommendation, apart from noting that the Postal Service’s resources are finite, and that the sorts of requirements urged by the Public Representative would siphon vital resources away from postal functions to essentially constant reporting”).

competitive contribution requirement for another year, and scheduling a further review to be conducted and definitive determination to be made in 2013.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

By its attorneys:

Kevin A. Calamoneri  
Managing Counsel, Corporate & Postal  
Business Law

Daniel J. Foucheaux, Jr.  
Chief Counsel, Pricing & Product Support

Nabeel R. Cheema

475 L'Enfant Plaza, S.W.  
Washington, D.C. 20260-1137  
(202) 268-7178; Fax -5402  
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